**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**
**R.S.A. No. 34 of 1995**

**Judgment reserved on: 25.4.2007**

**Date of decision: 16.05.2007**

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**State of H.P.** **Appellant**

**Versus**

**Chander Dev and others** **Respondents**

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***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

**The Hon'ble Mr.Justice Surinder Singh, Judge.**

***Whether approved for reporting?***

**For the Appellant: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Deputy Advocate General.**

**For the Respondents: Mr.G.D.Verma, Senior Advocate with Mr.B.C.Verma, Advocate**

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**Deepak Gupta, J.**

Because of the conflict of views in respect of the retrospective application of the amendment made to the H.P.Tenancy and Land Reforms Act between two learned single Judges of this court, a third Judge has referred the following substantial question of law for decision by the Division Bench.

> "What is the effect of proviso added towards the end of sub-section (9) of Section 104 of the H.P.Tenancy and Land Reforms Act, 1972 by the Amendment Act No. 6 of 1988 – whether it takes

away the vested rights of persons which had vested in them automatically under the provisions of the Principal Act which was in force till the Amendment Act came to be legislated ?"

The H.P.Tenancy and Land Reforms Act (hereinafter referred to as the Act) was passed by the Himachal Pradesh Legislature on 22nd December, 1972. This Act received the assent of the President of India on 2nd February, 1974 and was published in the Himachal Pradesh Rajpatra (Extra Ordinary) on 21st February, 1974. It came into force at once. Section 104(3) of the Act reads as follows:-

"(3) All rights, title and interest (including a contingent interest, if any) of a landowner other than a land-owner entitled to resume land under sub-section (1) shall be extinguished and all such rights, title and interest shall with effect from the date to be notified by the State Government in the Official Gazette vest in the tenant free from all encumbrances:

Provided that if a tenancy is created after the commencement of this Act, the provision of this sub-section shall apply immediately after the creation of such tenancy."

The Himachal Pradesh tenancy rules were framed by virtue of the powers vested under Section 21 of

the Act and were notified on 3rd October, 1975. Rule 27 which is relevant for our purpose as it stood prior to the amendment reads as follows:-

> "27. Procedure for conferment of proprietary rights on tenants covered by sub-section (3) of Section 104.-All rights, title and interest in the tenancy land of land-owners who have already under their personal cultivation 3 acres unirrigated or 1-1/2 acres irrigated land shall vest in the non-occupancy tenants with effect from the commencement of these rules. Similarly, the proprietary rights of tenancy land of the non-occupancy tenants on Government land shall also vest in the tenants from the commencement of these rules."

There is no manner of doubt that under the provisions of sub section 3 of Section 104 and Rule 27 as originally enacted, the tenants under the Government were entitled to and automatically acquired proprietary rights from the date of commencement of the rules.

The H.P.State Legislature passed Amendment Act No. 6 of 1988 which received the assent of the President of India on 25th March, 1988 and was published in the H.P.Rajpatra (Extra Ordinary) on 14th April 1988. Sub Section (3) of Section 1 of the

Amendment Act deals with the date of its enforcement and reads as follows:-

> "(3) It shall be deemed to have come into force from the date of commencement of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, but Section 3 and Section 4, in so far as it amends clause (g) and the second proviso to clause (i) of sub-section (2), sub-section (3) and sub section (4) of section 118 of the said Act, shall come into force at once."

By means of this Amendment Act the following proviso was added after sub section (9) of Section 104 which reads as follows:

> "Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Government under any law, whether before or after the commencement of this Act, and is leased out to any person."

By this proviso the provisions of Section 104 were made inapplicable to the lands owned by the State. By virtue of sub section (3) of Section 1 of the Amendment Act, this proviso was deemed to have been incorporated in the Act from the date of its commencement. The purpose behind the Act was to ensure that the lands of the State are not vested in the

non occupancy tenants. The objects and reasons of the Act read as follows:-

> "Under the existing provisions contained in the Himachal Pradesh Tenancy and Land Reforms Act, 1972, the right, title and interest of the Government in the lands owned by it and leased out to a person vest in tenants. It is imperative that the proprietary rights in Government lands, by and large regenerated through public funds, should not pass the private persons. It has, therefore, become necessary to make suitable amendment in Section 104 of the said Act."

The question whether the Amendment Act takes away the vested rights of the persons which had vested in them automatically under the provisions of the unamended Act which held the field till the Amending Act No. 6 of the Legislature came up for consideration before a Single Judge of this court (Justice Devinder Gupta) in **Devi Chand Vs. State 1994 (4) SLJ 2926**. The learned Single Judge held as follows:-

> "11. Bare reading of sub-section (3) of Section 1 of the amendment Act makes it clear that in so far as Section 2 of the amendment Act is concerned, the same shall be deemed to have come into force from the date of the commencement of the Act (Act No. 8 of 1974), namely, 21st February, 1974. In

other words, the proviso added towards the end of sub-section (9) of Section 104 shall be deemed to have always existed in the Act. Section 2 of the Amendment Act, by virtue of sub-section (3) of Section 1 shall be deemed to have come into force on the date of the commencement of the Act. Reading of proviso makes the intention of the Legislature clear that in so far as the land, which is either owned or is vested in the State Government under any law, nothing contained in Section 104 shall apply thereto, whether before or after the commencement of the Act. Thus the Government lands leased out to any person have been exempted from the operation of Section 104 of the Act and thus there is no question of the applicability of Rule 27 of the Rules to such of the lands, which are either owned or vested in the State Government and have been leased out to any person.

12. The question, which now remains to be decided is as to whether the plaintiff could have been divested of the rights vested in him.

13. There cannot be any dispute with the well-settled proposition that the Union Parliament as also the State Legislature have the plenary powers of legislation within the field of legislation committed to them and subject to certain constitutional restrictions they can legislate prospectively as well as retrospectively. It is also one of the cardinal principle of construction of statute that it prima facie

is prospective unless it is expressly or by necessary implication made to have retrospective operation. This rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only and not retrospective.

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16. The aforementioned decisions also elaborate the proposition that retrospective operation is not taken to be intended unless that intention is manifest by express words or necessary implication. Now in case, reference is made to the proviso added towards the end of sub-section (9) of Section 104 of the Act, in the light of the language used, sub-section (3) of Section 1 of the amendment Act; which says that the same shall be deemed to have come into force on the date when the Act became operative; and that of the proviso which states that nothing contained in Section 104 shall apply to any land owned or vested in the State Government, either before or after the commencement of the Act, there is no escape in concluding that the intention of the State Legislature is manifest by express words that the amendment carried out to Section 104 of the Act shall have retrospective effect. In other

words, the proviso added towards the end of sub-section (9) shall be deemed to be have always existed in Section 104 of the Act."

The aforesaid decision was rendered on 23rd March, 1994. An identical question came up for consideration before another learned Single Judge of this court (Justice Kamlesh Sharma ) in **Dinesh Kumar Vs. State of H.P. and others 1994(Supplement) SLC, 385.** This matter was decided on 30th December, 1994. It, however, appears that the earlier decision delivered by Justice Gupta in Devi Chand's case was not brought to the notice of Justice Kamlesh Sharma. The learned Single Judge clearly held that there is no manner of doubt that the proviso in question has been made retrospectively applicable. However, she went on to hold that the legislature did not intend to take away the substantive right which had already vested and according to her the proprietary rights which had already accrued and stood automatically conferred could not be taken away by the proviso inserted by way of amendment. It would be relevant to refer to certain portions of the said judgment.

> “7. Applying the above stated principles of interpretation of Statutes to the proviso in question, it is clear that though it is not declaratory or procedural, yet, it has been given retrospective effect. The Legislature intended that it should be read in section 104 of the Act from the date of commencement thereof. Therefore, there is no doubt that the proviso in question has been made retrospective expressly. The real question is whether the legislature intended to take away the vested substantial rights which had accrued to those in whose favour proprietary rights stood conferred and mutations thereof attested and they had made further transfers resulting in creation of further substantial rights in favour of other persons. In other words, this court is to examine from the language used in the proviso in question to what extent retrospectivity was intended by the Legislature.”

Thereafter the learned Judge refers to the objects and reasons of the Amending Act and goes on to hold as follows:-

> “9. From the Statement of Objects and Reasons, it appears that it was not in the mind of the Legislature to put the clock back to the date of commencement of the Act and take away the substantial rights vested in the tenants of the Government land from the date of commencement

of the Act to the date of promulgation of the Amendment Act of 1987. Nothing has been said in respect of necessity of giving retrospective effect to the proviso in question. Reading the proviso in question in the backdrop of Objects and Reasons, it is clear that the retrospectivity has been given only in respect of those lands of the Government which continue to be under the lease and in respect of which proprietary rights had not been conferred in between 21.2.1974 and 14.4.1988. Though the word `lease' has not been defined in the principal Act, but looking to the definition given under section 105 of the Transfer of Property Act, though under section 117 thereof agricultural lands are exempt from the provisions of Chapter V of that Act, it seems that the word `lease' has been used synonymous to the word `tenancy' as defined in Clause (18) of section 2 of the Act. It is :-

> " `tenancy' means a parcel of land held by a tenant of land owner under one lease or one set of conditions."

10. The proviso in question applied to the leases in existence on the date it stood promulgated and so far retrospectivity is concerned, it is given to the extent that these leases might be created before the coming into force of the Act or thereafter. The tenants over the land belonging to the Government cannot claim proprietary rights under section 104 of the Act on the ground that since their tenancy/lease

was created before the proviso in question was added, they had already acquired proprietary rights which were not affected by the proviso in question. In view of this interpretation, this Court does not find any substance in the argument of Sh. Kuldip Singh, learned Counsel for the appellants, that the proviso in question applies only to lease created after the coming into force of the Act. Therefore, in the absence of any specific provision incorporated in the proviso in question for taking away the substantial rights which vested during the period from 21.2.1974 to 14.4.1988 on the tenants/lessees and on others by virtue of legal transfers made by them, the only interpretation possible of the proviso in question is that, by its retrospectivity, it does not take away the rights of those tenants who have been conferred proprietary rights and mutations have been attested in their favour and those persons who have got the said land by way of transfer."

The dispute before us is, which of the aforesaid two decisions lays down the correct law.

We have heard Mr.M.S.Chandel, learned Advocate General, on behalf of the State and Mr.G.D.Verma, learned Senior Advocate, on behalf of the respondents.

At the outset we may notice that both the learned Judges have clearly held that the Amending Act specifically and expressly makes the amendment to Section 104 retrospectively applicable. There can be no manner of doubt that by virtue of sub section (3) of Section 6 of the Amendment Act, noted hereinabove, the proviso is deemed to have come into force from the date of commencement of the Act.

Learned counsel for the parties have referred to a large number of decisions in respect of the principles of Interpretation of Statutes. The contention of Mr. G.D.Verma, learned Senior Advocate, is that since the vested rights of the tenants who have been granted proprietary rights are being affected, the law should be interpreted in such a manner so as to further their cause and their vested rights should not be taken away by the interpretation given. On the other hand learned Advocate General has argued that when the language and meaning of the Act is absolutely clear and unambiguous, no other meaning should be given to it. It is not necessary to refer to all the judgments cited, but a few important ones are being noted.

In **Ahmedabad Manufacturing and Calico Printing Co., Ltd. Vs. S.G. Mehta, Income Tax Officer and another AIR 1963 SC 1436** the Apex Court held as follows:-

> **“** Under ordinary circumstances, an Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But this rule is not unalterable. The Legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens the provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed.”

In **Amireddi Raja Gopala Rao and others Vs. Amireddi Sitharamamma and others AIR 1965 SC 1970** the Apex Court held thus :-

> “A statute has to be interpreted, if possible, so as to respect vested rights, and if the words are

open to another construction, such a construction should never be adopted."

In **M/s Punjab Tin Supply Co., Chandigarh etc. etc. Vs. Central Government and others AIR 1984 SC 87** the Apex Court held as follows:-

"All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. It the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not."

In **Gurudevdatta VKSSS Maryadit and others Vs. State of Maharashtra and others AIR 2001 SC 1980** the Apex court held as follows:-

> "It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that where the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

In **Commissioner of Central Excise, Chandigar II (2005) 8 SCC 308** the Apex Court held that the basic rule in interpretation of any statutory provision is that the plain words of statute must be given effect to.

The law with regard to the interpretation of statute has now been succinctly laid down in **Vemareddy Kumaraswamy Reddy and another Vs. State of A.P. (2006) SCC 670**.

> "12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sentential legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous.
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> 13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language. In spite of courts saying so, the draftsmen have paid little attention and they still boast of the old British jingle

> "I'm the parliamentary draftsman
> I compose the country's laws
> And of half the litigation
> I'm undoubtedly the cause",

which was referred to by this Court in Palace Admn. Board V. Rama Varma Bharathan Thampuran[1](SCC at p. 244, para 21; AIR at p. 1195). In Kirby Vs. Leather[2] the draftsmen were severely criticized in regard to Section 22(2)(b) of the (UK) Limitation Act, 1939, as it was said that the section was so obscure that the draftsmen must have been of unsound mind.

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can

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[1] 1980 Supp SCC 234: AIR 1980 SC 1187
[2] (1965) 2 All ER 441: (1965) 2 QB 367: (1965) 2 WLR 1318 (CA)

be vouchsafed by “an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so”. (See Frankfurter “Some Reflections on the Reading of Statutes in `Essays on Jurisprudence’”, Columbia Law Review, p. 51)

16. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India Vs. Price Waterhouse[3].) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford Vs. Spooner[4], courts cannot aid the legislatures’ defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat Vs. Dilipbhai Nathjibhai Patel[5]). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. {See Stock v. Frank Jones

[3] (1997) 6 SCC 312: AIR 1998 SC 74
[4] (1846) 6 Moo PC 1: 4 MIA 179
[5] (1998) 3 SCC 234: 1998 SCC (Cri) 737 : JT (1998) 2 SC 253

(Tipton) Ltd. [6]} Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. Vs. Evans[7] quoted in Jumma Masjid Vs. Kodimaniandra Deviah[8]).

17. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. Vs. Yensavage[9].) The view was reiterated in Union of India Vs. Filip Tiago De Gama of Vedem Vasco De Gama[10] (SCC p. 284, para 16).

18. In D.R. Venkatachalam v. Dy. Transport Commr.[11] It was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

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[6] (1978) 1 All ER 948 : (1978)1 WLR 231 (HL)
[7] 1910 AC 444 : 79 LJKB 954 (HL)
[8] 1962 Supp (2) SCR 554 : AIR 1962 SC 847
[9] 218 FR 547
[10] (1990) 1 SCC 277 : AIR 1990 SC 981
[11] (1977) 2 SCC 273 : AIR 1977 SC 842

19. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST V. Popular Trading Co.[12]) The legislative casus omissus cannot be supplied by judicial interpretative process. (See Maulavi Hussein Haji Abraham Umarji v. State of Gujarat [13] and State of Jharkhand v. Govind Singh[14].)

In **Bombay Dyeing & Mfg. Co. Ltd. (3) Vs. Bombay Environmental Action Group and others (2006) 3 SCC 434** the Apex Court held that the normal rule of interpretation is that unless literal meaning given to a document leads to anomaly or absurdity, the principle of literal interpretation should be adhered to. In respect of the purposive construction of the statute, the Apex Court referred to the following definition of purposive construction as given in Francis Bennion's Statutory Interpretation.

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

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[12] (2000) 5 SCC 511
[13] (2004) 6 SCC 672 : 2004 SCC (Cri) 1815
[14] (2005) 10 SCC 437 : 2005 SCC (Cri) 1570

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive and literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

From a reading of the aforesaid decisions of the Apex Court it can easily be deduced that it is a cardinal principle of the law of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another well established rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have

always adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

Another established rule of interpretation of statute is that normally all laws which affects substantive rights operate retrospectively and there is a presumption against their retrospective operation. However, if the legislature has made the provision affecting the substantive right retrospectively applicable and has specifically stated so, then the language of the Act must be given in its natural meaning and retrospective effect should be given as intended. If the language is clear and unambiguous to the effect that the retrospective operation has to be given, then the court cannot circumvent the language by holding that substantive rights cannot be taken away.

We must note that here we are only interpreting the section. No challenge is made to the validity of the section. In fact no such challenge can be made in an appeal under Section 100 CPC. We want to make it absolutely clear that we are not expressing any opinion on the question whether the amendment is constitutionally valid or not since that question does not arise for decision. We, therefore, hold that the observations made by Justice Kamlesh Sharma in Dinesh Kumar's case in para 12 wherein it was held that the proviso in question may be challenged on the ground that it is violative of Article 300-A of the Constitution of India was totally in the nature of obiter. This question did not arise before her and in an appeal under Section 100 CPC, she could not have decided this question.

The thrust of the argument of Mr.G.D.Verma, learned Senior Advocate, is that it is well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospective application may be inferred, an amendment which is not procedural in nature and affects substantive rights is always deemed to be prospective in nature. There is no quarrel with this

proposition of law. There is also no dispute with regard to the proposition canvassed by Mr. Verma that under the Act as it stood before, its amendment the rights of the land owners (including the State) vested in the tenant(s) free from all encumbrances automatically from the date of notification of the publication of the rules. Reference in this behalf may be made to **Daulat Ram etc. Vs. The State of Himachal Pradesh etc. (1978) 7 ILR 742.** In the present case the legislature in its wisdom specifically made the proviso retrospectively applicable. Sub section (3) of Section 1 of the Amendment Act clearly lays down that the amendments would come into force from the date of commencement of the H.P. Tenancy and Land Reforms Act. The proviso which has been inserted is deemed to have been inserted from the date when the Act came into force. The rules were framed later on. By virtue of the amendment being given retrospective effect the proviso is deemed to have been incorporated in the Act prior to the framing of the Rules. Therefore, on the date when the rules came into existence, no non-occupancy tenant under the Government could have been granted proprietary rights. Once the legislature has

clearly laid down that the amendment taking away substantial rights shall have retrospective application, the court cannot violate the plain and simple language of the Amendment Act and make it prospective in nature. On the one hand the learned Judge deciding Dinesh Kumar's case held that the amendment is retrospective, but on the other hand went on to hold that the intention of the legislature did not appear to be to take away the vested rights of the tenant. With due respect to the learned Judge, we are unable to subscribe this view. We are of the view that the latter judgment delivered by Justice Kamlesh Sharma must be held to be per incuriam in view of the fact that it did not notice the earlier judgment delivered by Justice Devinder Gupta.

It was lastly urged by Mr. G.D.Verma, learned Senior Advocate, that in case the proviso is held to be retrospective and takes away the vested rights of the tenants, it would lead to chaos inasmuch as the rights of the hundreds and thousands of persons may be affected. As already stated above, we are not deciding the validity of the provision. We are only interpreting the provision as it stands. The language of the Amending Act and the

proviso is absolutely clear and unambiguous. There is no manner of doubt that the said amendment has been made retrospectively applicable. Therefore, we have no other option, but to hold that the proviso added at the end of section 9 of Section 104 of the Act by Amendment Act No. 6 of 1998 is retrospective in nature and it also takes away the rights of the persons which rights may have vested in them automatically under the provisions of the unamended Act.

The question is answered accordingly and the appeal may now be placed before the learned Single Judge.

( Deepak Gupta ), J.

May 16, 2007(K) ( Surinder Singh ),J.